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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

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11 ALICIA L. LIMTIACO,

12 Plaintiff(s),

13 vs.

14 AUCTION CARS.COM, LLC.,

15 Defendant(s).
16 _____

Case No. 2:11-cv-370-RLH-PAL

ORDER
(Motion to Dismiss—#8)

17 Before the Court is Defendant's Motion to Dismiss (#8, filed April 28, 2011). Plaintiff
18 filed a Response (#10), to which Defendant filed a Reply (#11). The motion is based upon Rule
19 12(b)(1) and (6). (There is also a request for attorney fees and costs pursuant to Fed. R. Civ. P. 11,
20 but was withdrawn in the Reply.)

21 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
22 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short and
23 plain statement of the claim showing that the pleader is entitled to relief." While a pleading generally
24 need not contain detailed allegations, it must allege sufficient facts "to raise a right to relief above the
25 speculative level." *Bell Atlantic Corp. V. Twombly*, 550 U.S. 544, 555 (2007). A complaint does not
26 allege sufficient facts to raise a right to relief above the speculative level if it contains nothing more

1 than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
2 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
3 Instead, in order to survive a motion to dismiss, a complaint must contain sufficient factual matter to
4 “state a claim to relief that is plausible on its face.” *Iqbal*, 129 S. Ct. At 1949 (internal citations
5 omitted).

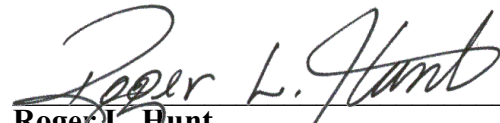
6 In *Ashcroft v. Iqbal*, the Supreme Court provided a two-step approach for district
7 courts to apply when considering motions to dismiss. First, the court must accept as true all factual
8 allegations in the complaint. *Id.* at 1950. A court does not, however, assume the truth of legal
9 conclusions merely because the plaintiff casts them in the form of factual allegations. *Id.* at 1950;
10 *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Mere recitals of the
11 elements of a cause of action, supported only by conclusory statements also do not suffice. *Iqbal*, 129
12 S. Ct. at 1949. Second, the court must consider whether the factual allegations in the complaint allege
13 a plausible claim for relief. *Id.* at 1950. “A claim has facial plausibility when the plaintiff pleads
14 factual content that allows the court to draw a reasonable inference that the defendant is liable for the
15 alleged misconduct.” *Id.* at 1949. Thus, where the complaint does not permit the court to infer more
16 than the mere possibility of misconduct, the complaint has “alleged—but not shown—that the pleader
17 is entitled to relief.” *Id.* (Internal quotation marks omitted). When the claims in a complaint have not
18 crossed the line from conceivable to plausible, plaintiff’s complaint must be dismissed. *Twombly*,
19 550 U.S. at 570.

20 This is not a motion for summary judgment and will not be considered as such. Even
21 if it were, there are material questions of fact which would preclude granting a motion for summary
22 judgment at this stage in the proceedings.

23 Plaintiff has adequately alleged sufficient facts “to raise a right to relief above the
24 speculative level.” Whether she will prevail at trial, or a subsequent motion for summary judgment,
25 remains to be seen. However, at present the Court finds that her allegations, if taken as true, are
26 sufficient to state a claim.

1 IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (#8) is DENIED.

2 Dated: October 11, 2011.

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5 **Roger L. Hunt**
6 **United States District Judge**
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